IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1875 of 2001
WITH
SPECIAL CIVIL APPLICATION No 3228 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODBALA BIHARILAL RAVAL

Versus

STATE OF GUJARAT

Appearance:
MR PRADEEP PATEL for Petitioner
MR VM PANCHOLI FOR Respondent Nos. 1 & 2
MR HS MUNSHAW with MR JM BAROT for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/05/2001

ORAL JUDGEMENT

Rule in Special Civil Application No. 1875 of 2001. The learned counsel for the respondents waive service of Rule.

2. Both the petitions are filed by the same petitioner who is presently holding the post of Supervisor under the Integrated Child Development Scheme of the State Government in Class-III service. The petitioner in Special Civil Application No. 3228 of 2001 has challenged the final seniority list dated 31.3.1997 of the cadre of Supervisors Class-III by contending that her placement in the said seniority list should be made on the basis of the date of joining service. In Special Civil Application No. 1875 of 2001, the petitioner has prayed for a direction that the petitioner be permitted to appear at the departmental examination for promotion to Class-II service by treating the petitioner as senior to others who are presently being permitted to appear at the examination. The petitioner, has, in the alternative, also prayed for a direction to consider the petitioner's request for higher scale in view of completion of 9 years of service.

3. In response to the notice, Affidavit in reply has been filed in Special Civil Application No. 1875 of 2001. It has been pointed out in the said Affidavit as under:

> The provisional state wise seniority list of supervisor was prepared and circulated vide letter dated 15.10.1994 and objections were invited. After receiving the objections and considering the same, a final seniority list was prepared and circulated vide letter dated 31.3.1997. The seniority list was prepared taking into consideration the year of passing the selection process held by the Panchayat Selection Committee and the rank obtained by the candidates in the selection. Accordingly, the name of the petitioner was placed at serial number: 527 in the final seniority list. Column 10 of the seniority list provides information about the year of passing the Panchayat Selection Committee and rank obtained by the candidates. In accordance with the criteria formulated for preparing the seniority list, the petitioner's name came at serial No. 527 in the year 1997. This list is continued to be in operation from 1997 till date. Moreover, the petitioner has not objected nor filed any petition against the said final select list published on 31.3.1997 which continues to be in operation till date.

3.1 It is further stated in the said Affidavit that

for the purpose of calling the candidates for departmental promotion to Class-II service to be held in May, 2001, the seniority list till date is operated till serial No. 500. Thus candidates who have not passed the departmental examination and whose name is in the final seniority list up to SNo. 500 have been called to appear for the present examination. The petitioner's name in the said seniority list appears that serial No. 527 and is thus not called for present examination. As stated hereinabove, the petitioner is junior to all those who are called for departmental examination and thus, the petitioner cannot be permitted to jump the que.

3.2 As regards circulation of the final seniority list, the respondents have stated in the reply affidavit that the final seniority list of supervisor circulated vide the office letter dated 31.3.1997 has been given to every supervisor through concerned Head of Office. The petitioner has not raised any objection against placement of her name at serial No. 527 in the said seniority list. The said seniority list is still operative and according to the said seniority list candidates are being called for in seriatim to appear for the departmental examination as the said seniority list has continued to be in operation for three to four years.

4. It is thus obvious that the final seniority list dated 31.3.1997 is being operated and is in force for the last 4 years. The petitioner not having challenged the said final seniority list cannot now be permitted to challenge the same. In K.R.Mudgal Vs. R.P.Singh and Others, AIR 1986 SC 2086, the Apex Court has followed the following dictum passed by a constitution Bench in Malcom Lawrence Cecil D'Souza Vs. Union of India, AIR 1975 SC 1269 :

> "Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative

> complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such some time."

In the aforesaid decision in K.R.Mudgal (supra) the Apex Court has held that the Government servant who is appointed to any post ordinarily, should, at least be allowed to attend to the duties peacefully and without any sense of insecurity. In view of the above principle laid down by the Apex Court in Malcom Lawrence Cecil D'Souza Vs. Union of India (supra) and K.R.Mudgal Vs. R.P.Singh (supra), the challenge to the final seniority list dated 31.3.1997 cannot be entertained.

5. Mr. Pradeep Patel for the petitioner, has, however, placed reliance on the decision of the Apex Court in Maharashtra Vikrikar Karamchari Sangathan Vs. State of Maharashtra, AIR 2000 SC 622; particularly on the observations made in paragraph 28 thereof. In the facts of that case, the seniority list in question came to be published in the year 1992-1993 during the pendency of the petition which was filed in the Bombay High Court in the year 1987. Hence the facts in the said case were entirely different and, there was no question of delay of 3-4 years in filing the petition. In fact, one of the appeals before the Supreme Court itself was instituted in 1994, hence the reliance placed by the learned counsel for the petitioner on the aforesaid decision is misconceived.

6. The learned counsel for the petitioner has also placed reliance on the decision of this Court in Safimiya G. Malek Vs. State, GLR 33(1) page 704. That was a decision rendered on the basis of interpretation of the relevant statutory rules applicable to that case. In the instant case, it is the case of the Respondents that seniority is being fixed on the basis of the rank obtained by the selected candidates at the time of selection by the Gujarat Panchayat Services. As per the settled legal position, the seniority of candidates directly selected at the competitive examination or selection test is ordinarily fixed on the basis of rank obtained at such examination/test and, therefore, in principle also, there is nothing wrong with the basis of seniority adopted by the Respondents.

7. The petitioner has also sought to challenge the seniority of a few individual employees by giving a few examples in the memo of the petition. However, apart

from the fact that those employees are not joined as party respondents in this petition, it is pertinent to note that when the petitioner filed her objections against the provisional seniority list in the year 1994, those objections dated 9.11.1994 (Annexure-C to Special Civil Application No. 1875 of 2001) did not make any reference to those employees but made a reference only to MS V.B.Raval who reported for duty on 21.12.1985 and was placed at SNo. 452 whereas the petitioner reported for duty on 6.12.1985 and was placed at SNo. 486. As already stated above, in case of candidates selected for direct recruitment, their seniority is fixed on the basis of their rank in the examination or selection and, therefore, the date of appointment would not have any relevance.

8. Since the only basis on which the petitioner was claiming right to appear at the examination was on the ground that her seniority was not correctly fixed and since the foundation of that claim disappears, in as much as the petitioner's challenge to the seniority list dated 31.3.1997 fails, nothing further is required to be done regarding the petitioner's claim for appearing at the examination being held this month. Of course, by an interim order dated 21.3.2001, the respondents were required to accept the petitioner's form for examination to be held in May 2001 but as stated above, only the candidates up to SNo. 500 have been allowed to appear at the examination and since the petitioner's name is at SNo. 527 in the final seniority list, the petitioner has no claim to appear at the examination being held this month and, accordingly, the respondents are not required to permit the petitioner to appear at the examination.

9. The only claim which now survives is the petitioner's contention that she has put in 9 years of service and as such the petitioner should be given the benefit of 9 years service. The Affidavit in Reply does not deal with this particular prayer or contention. It is, therefore, directed that the respondent shall consider the petitioner's claim for the benefit of higher pay scale on completion of 9 years service as expeditiously as possible and, in any case within 2 months from the date of receipt of the writ of this Court or a certified copy of this order, which ever is earlier. This is the only prayer which is being granted and the rest of the prayers are rejected.

10. Rule in Special Civil Application No. 1875 of 2001 is made absolute only in terms of the directions contained in para 9 hereinabove. In respect of the rest

of the prayers, Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

Special Civil Application No. 3228 of 2001 is summarily dismissed.

(M.S.Shah, J)

Jayanti*